

## FEDERAL ELECTION COMMISSION

999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

## FIRST GENERAL COUNSEL'S REPORT

MUR: RR 04L-08

DATE OF REFERRAL: June 16, 2004

DATE ACTIVATED: July 21, 2004

EXPIRATION OF SOL: March 31, 2009

SOURCE: Internally Generated

RESPONDENTS: Mike D. Crotts  
Mike Crotts for Congress Committee, Inc.  
and Vicki Gibbs, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(d)  
2 U.S.C. § 441a-1(a)  
2 U.S.C. § 441a-1(b)

11 CFR § 400.4  
11 CFR § 400.9(b)  
11 CFR § 400.10  
11 CFR § 400.20  
11 CFR § 400.21  
11 CFR § 400.22  
11 CFR § 400.23  
11 CFR § 400.25  
11 CFR § 400.41

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

This matter concerns new reporting requirements, arising under the so-called  
“millionaires’ amendment” of the Bipartisan Campaign Reform Act, which obligate candidates

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1 to comply with special reporting and notification requirements after expending personal funds in  
2 excess of certain thresholds. The Reports Analysis Division has referred the Mike Crotts for  
3 Congress Committee, Inc. ("the Committee"), the authorized committee of congressional  
4 candidate Mike D. Crotts, for its failure to timely file a statement notifying the Commission and  
5 Mr. Crotts' opponents that Mr. Crotts had surpassed the threshold which might trigger higher  
6 contribution limits for his opponents by expending over \$350,000 in personal funds in support of  
7 his candidacy. A review of Mr. Crotts' statement of candidacy suggests additional potential  
8 violations.

9 Based on a review of the relevant disclosure reports and available information, this Office  
10 recommends that the Commission find that the Committee violated provisions of the Act  
11 regarding the reporting of personal funds expenditures. Because these laws create obligations for  
12 candidates, this Office recommends that the Commission also find that Mike D. Crotts violated  
13 the Act.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Facts**  
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17 Mike D. Crotts declared his candidacy for Georgia's Eighth District seat in the United  
18 States House of Representatives to the Federal Election Commission on July 8, 2003 by filing an  
19 FEC Form 2, Statement of Candidacy. The Form 2 requires candidates to submit a "declaration  
20 of intent to expend personal funds," which Mr. Crotts failed to complete with his filing.  
21 Consequently, on July 29, 2003, the Reports Analysis Division sent him a letter notifying him of  
22 his failure to complete that section of Form 2 and requested that he send in a revised form. On

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1 September 17, 2003, Mr. Crotts submitted an amended Form 2 declaring his intent not to spend  
2 personal funds in excess of \$350,000 in his primary or general elections.<sup>1</sup>

3 Mr. Crotts made a \$400,000 loan to the Committee on March 31, 2004.<sup>2</sup> By expending  
4 over \$350,000, the Committee and candidate were obligated to file with the Commission and  
5 with Mr. Crotts' opponents an FEC Form 10, Notification of Expenditures from Personal Funds  
6 within 24 hours of the threshold expenditure, or by April 1, 2004. Following disclosure of the  
7 loan in the Committee's April 2004 Quarterly Report, the Reports Analysis Division ("RAD")  
8 sent a letter reminding the Committee of the special filing requirement on April 20, 2004. The  
9 Committee filed the required statement with the Commission 47 days late, on May 18, 2004.

10 In follow-up conversations with RAD, the Committee acknowledged that it failed to  
11 timely file the FEC Form 10, claiming that the failure was due to an oversight on the part of the  
12 treasurer. The Committee also acknowledged that it had not filed a statement with the  
13 candidate's opponents, citing a lack of contact information. RAD provided contact information  
14 to the Committee to enable it to make the appropriate additional filings, but RAD never received  
15 confirmation on whether the filings with the opposing candidates were completed.

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<sup>1</sup> Expenditures from personal funds expenditures exceeding \$350,000 require House candidates to comply with special filing and notification requirements and may entitle the candidate's opponents to higher contribution and coordinated expenditure limits. See 2 U.S.C. § 441a-1(a)(1) and 2 U.S.C. § 441a-1(b)(1)(C). The form requests information on both the primary and general elections. Mr. Crotts lost his primary election on July 20, 2004 and was not a candidate in the general election.

<sup>2</sup> Mr. Crotts reported making four other loans prior to the \$400,000 loan that triggered the reporting requirement. Two loans for a total of \$13,400 were made in the summer of 2003 before the declaration to expend personal funds was filed. The loans of \$10,000 on July 3, 2003 and \$3,400 on August 11, 2003 were repaid in September 2003. The candidate loaned the Committee \$20,000 on February 12, 2004 and \$16,500 on March 26, 2004.

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1           **B.     Analysis**

2           Within 15 days of becoming a candidate to the U.S. House of Representatives, a  
3           candidate must file a declaration stating the total amount of expenditures from personal funds  
4           that the candidate intends to make with respect to the election that will exceed \$350,000 (FEC  
5           Form 2). 2 U.S.C. § 441a-1(b)(1)(B); 11 C.F.R. § 400.20. An expenditure from personal funds  
6           includes direct contributions as well as loans made by a candidate using personal funds or a loan  
7           secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A);  
8           11 C.F.R. § 400.4. If a candidate makes an aggregate amount of expenditures from personal  
9           funds in excess of \$350,000, the candidate or authorized committee shall file a notification of the  
10          expenditure within a day of exceeding the threshold (FEC Form 10). 2 U.S.C. § 441a-1(b)(1)(C);  
11          11 C.F.R. § 400.21(b).<sup>3</sup> For each additional expenditure of \$10,000 or more, the candidate is  
12          required to file additional notifications.<sup>4</sup> 2 U.S.C. § 441a-1(b)(1)(D); 11 C.F.R. § 400.22. These  
13          notifications must be filed with the Commission and with each candidate in the same election  
14          and the national party of each such candidate. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R.

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<sup>3</sup>       A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A)) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *See* 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41. Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. *See* 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. *See* 11 C.F.R. § 400.10.

<sup>4</sup>       The initial notification and additional notifications must include the date and amount of the expenditures and the total amount expended as of the date of the filing. 2 U.S.C. § 441a-1(b)(1)(E), 11 C.F.R. § 400.23.

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1 §§ 400.21(b) and 400.22(b). Although FEC Form 10 is signed by the committee treasurer, the  
2 candidate is responsible for ensuring that it is filed in a timely manner. *See* 11 C.F.R. § 400.25.

3 The Respondents' notification of spending over \$350,000 was not filed in this case until  
4 47 days after the deadline and almost a month after a RAD inquiry. To date, it is still unknown  
5 whether the appropriate filings were made with the opponents of Mr. Crotts. Therefore, this  
6 Office recommends that the Commission find reason to believe that the Mike Crotts for Congress  
7 Committee, Inc. and Vicki Gibbs, as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R.  
8 § 400.21(b). Since the statute and regulations place a requirement on the candidate to ensure that  
9 the appropriate filings are made with respect to his expenditures from personal funds, this Office  
10 recommends that the Commission find that Mike D. Crotts has violated 2 U.S.C. § 441a-  
11 1(b)(1)(C).

12 An additional violation appears to have occurred with respect to the filing of the  
13 declaration of intent to expend personal funds. 2 U.S.C. § 441a-1(b)(1)(B). The candidate  
14 completely omitted the personal funds declaration on his original statement of candidacy,  
15 addressing it only after RAD inquiries, and failed to timely file the appropriate notifications  
16 when he exceeded the relevant threshold personal funds expenditure. The declaration, which is  
17 due within 15 days of the commencement of a candidacy, was filed on September 17, 2003, over  
18 two months after the candidate's initial statement of candidacy was filed on July 8, 2003.<sup>5</sup>  
19 Accordingly, this Office recommends that the Commission find that Mike D. Crotts violated 2  
20 U.S.C. § 441a-1(b)(1)(B).

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<sup>5</sup> The late-filed declaration stated that Mr. Crotts would make no expenditures above the threshold amount.

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**III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Mike Crotts for Congress Committee, Inc. and Vicki Gibbs, as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b);
3. Find reason to believe that Mike D. Crotts violated 2 U.S.C. § 441a-1(b)(1)(B) and 2 U.S.C. § 441a-1(b)(1)(C);
4. Enter into pre-probable cause conciliation with all Respondents;
5. Approve the attached Factual and Legal Analysis;
6. Approve the attached Conciliation Agreement; and
7. Approve the appropriate letter.

Lawrence H. Norton  
General Counsel

11/17/04  
Date

BY: Rhonda J. Vosdingh  
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Attachments

1. Factual and Legal Analysis.
2. Conciliation Agreement.

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